

From: Jeffory Scharff <jscharff@scharff.us>
To: Patrick Pulupa <PPulupa@waterboards.ca.gov>
CC: Clint Snyder <CSnyder@waterboards.ca.gov>, Karen Traugh <ktraugh@scharff...>
Date: 4/14/2011 7:55 AM
Subject: Re: Winemucca ACL

Ok I will look for it.

Karen disregard my voice mail.

On 4/13/11 4:29 PM, "Patrick Pulupa" <PPulupa@waterboards.ca.gov> wrote:

> Hi Jeff,
>
> We'll be sending you waiver language Friday, and then we'll work to
> come up with some new deadlines, so that this matter could be brought
> before the Board in August.
>
> -Patrick
>
> *****
> Patrick Pulupa, Staff Counsel
> Office of Chief Counsel
> State Water Resources Control Board
> 1001 I St., 22nd Floor
> Sacramento, CA 95814
> Phone: (916) 341-5189
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>
>>>> Alex Mayer 4/13/2011 4:24 PM >>>
>
> Mr. Scharff and Mr. Pulupa,
>
> The Advisory Team has reviewed Mr. Scharff's email dated April 11,
> 2011. Although the email was not circulated to the Prosecution Team, the
> Prosecution Team has reviewed it, responded to it, and views it as an
> informal motion to modify the deadline contained within the subpoena. In
> light of those facts, the Advisory Team will treat Mr. Scharff's April
> 11, 2011 email as an informal motion to modify the administrative
> subpoena issued by the Prosecution Team on April 1, 2011.
>
> The Advisory Team finds that good cause exists to modify the deadline
> in the subpoena. Winemucca has alleged that it cannot produce all of
> the documents identified by the subpoena by April 18, 2011 because Mr.
> Mike Sommers is unavailable prior to April 18, 2011 and that much of the

> information identified by the subpoena is uniquely and solely within his
> possession, custody, and control. The Prosecution Team has concurred
> with the validity of this statement.
>
> Finding that good cause exists, the Advisory Team will conditionally
> grant the motion to modify the subpoena on the condition that Winemucca
> Trading Company, Ltd. (Winemucca) submits to the Advisory Team, upon
> consultation with the Prosecution Team, a written waiver to the right to
> a hearing on the administrative civil liability complaint within 90 days
> after service of the complaint. See Water Code section 13323(b). In
> agreeing to such a waiver, Winemucca should explicitly reserve its
> ability to request a hearing in the future.
>
> Upon satisfaction of this condition, the sentence beginning on line 3
> of page 2 of the administrative subpoena is modified to read:
> "Winemucca Trading Company, Limited IS HEREBY COMMANDED to produce
> the papers, books, records, and documents in your possession or under
> your control described below in connection with the above-titled
> investigation by May 2, 2011, or any subsequent time approved in writing
> by the Prosecution Team."²
>
> The Prosecution Team is also directed work with Winemucca to issue new
> draft hearing procedures that include a hearing date scheduled for the
> Central Valley Water Board meeting to be held in August 2011.
>
> Alex P. MayerStaff Counsel, Central Valley Regional Water Quality
> Control Board
>
>>>> Patrick Pulupa 4/13/2011 1:30 PM >>>>
> Hi Alex and Ken,
>
> Winemuccas representatives and the Prosecution Team consulted yesterday
> to try and resolve the issue of the April 18 timeline contained in the
> subpoena. It is the Prosecution Teams desire to move forward with a June
> Hearing, and if the April 18 date is pushed back, the Prosecution Team
> would need to re-schedule consideration of the ACL Complaint to the
> August Board meeting.
>
> As it is the Prosecution Teams desire to bring this matter to the Board
> in June, we would prefer that the April 18 submittal date in the
> subpoena not be modified. However, we understand Winemucca to have a
> valid concern regarding the submittal date, and therefore, we suggested
> that Winemucca appeal to the Advisory Team to obtain your ruling on the
> extension of the April 18 deadline.
>
> The Prosecution Team also interprets Mr. Scharffs e-mail to be an
> informal motion to quash or modify the subpoena, and we dont necessarily
> believe that any greater degree of formality is needed to make this
> motion (e-mail motions are fine by us).
>
> Lastly, while the subpoena is a legally distinct matter from the ACL
> Hearing Procedure schedule, the two are intimately related. If the
> Prosecution Team does not receive a submittal from Winemucca by April
> 18, the Prosecution Team would not be able to meet our evidentiary
> deadline, which is April 20 (we anticipate including some of the
> submitted documents in our evidentiary submittal). So, if the Advisory

> Team moves the April 18 deadline, the Prosecution Team would work with
> Winemucca to revise the dates in the Hearing Procedure, and we would
> also presume that the Advisory Team would direct Winemucca to submit a
> waiver that would allow us to push the Hearing back to August as a
> condition of granting the extension of the April 18 deadline.

>

> Thanks,

>

> Patrick

>

>

> *****

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> Office of Chief Counsel
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>

>>>> Alex Mayer 4/13/2011 1:05 PM >>>

> Mr. Scharff,

>

> The proposed hearing procedures for this proceeding stipulate that the
> Winemucca Trading Ltd. (the discharger) shall contact the Prosecution
> Team to try to resolve objections regarding due dates before submitting
> objections to the Advisory Team. If you have not already done so, I
> suggest you do. I did receive an email from you yesterday that referred
> to a conference call. If the April 18 deadline was discussed at the
> conference call yesterday and the parties resolved this issue, please
> indicate so to the Advisory Team.

>

> The administrative subpoena issued to the discharger states that
> objections to the subpoena shall be in the form of a motion for a
> protective order, including a motion to quash. As indicated in the
> administrative subpoena, motions are to be sent to Mr. Kenneth Landau at
> the address provided. Since the Advisory Team has not received any such
> motions, it is not in a position to rule on the April 18 deadline.

>

> I must add that it is unclear to the Advisory Team whether the
> discharger has waived its right to have a hearing before the Central
> Valley Water Board within 90 days, as provided in the Water Code. If
> the discharger waives this right (without waiving the right to have a
> hearing at all), the Prosecution Team may be in a better position to
> respond to your concerns.

> Sincerely,

>
> Alex P. Mayer
> Staff Counsel, Central Valley Regional Water Quality Control Board
>
>>>> Jeffory Scharff <jscharff@scharff.us> 4/11/2011 3:21 PM >>>
> I was encouraged by your colleague on the Prosecution Team to
> contact your office with regard to the pending ACL issued to
> Winemucca Trading Co.
>
> My principal point of contact, Mike Sommers is as noted below
> also an accountant with a number of private clients. In
> addition, he serves as the CFO to a Florida based aviation
> support company and spends weeks at a time on the east
> coast. He previously advised me of his limited availability
> after the tax season. As such I am not in a position to
> timely respond to the request for documents.
>
> Could we find a time to discuss the matter. Mr. Palupa is
> obviously aware of the issue but as I understand it there
> need to be clear lines of demarcation on a going forward basis.
>
> Thank you for your consideration of the matter
> I will await your reply.
>
> Jeffory J. Scharff, Esq.
> SCHARFF, BRADY& VINDING
> 400 Capitol Mall, Suite 2640
> Sacramento, CA 95814
> Telephone: 916/446-3400
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>
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> ----- Forwarded Message
> From: Jeffory Scharff <jscharff@scharff.us>
> Date: Mon, 11 Apr 2011 14:39:26 -0700
> To: Patrick Pulupa <PPulupa@waterboards.ca.gov>
> Cc: Karen Traugh <ktraugh@scharff.us>
> Conversation: Winemucca ACL
> Subject: Winemucca ACL
>
> Patrick:
>
> In advance of tomorrows call I offer the following for your
> consideration.
>

> While disappointed to receive the proposed complaint, I understand but
> had been lead to believe that staff was instead preparing a new CAO
> that would encompass the concepts set forth in our last meeting as
> prepared conceptually by Vestra as to a phased approach to compliance.
>
> Obviously, that would be the preferred course of action, and I am
> requesting
> reconsideration of the proposed ACL.
>
> Further, there are we believe questions of subject matter jurisdiction
> as
> to the Board's standing to pursue the matter that should be discussed.
>
> Last, as a practical matter, in order to respond to your
> administrative
> subpoena it will require the assistance of Mr. Sommers. In that he
> is an accountant, he has previously advised me that he is unavailable
> until April 18 under any circumstances and much of the information that
>
> the Board has requested is uniquely and solely within his possession,
> custody and control.
>
> In addition, after you and Karen set up our conference call I got
> dragged into a request for an urgent meeting. The only time that
> worked was 10 am meeting. Would it be possible to roll back the
> time of our call to 11:30?
>
> I checked to see if I could start our meeting with the consultant
> earlier but
> they have someone ahead of us.
>
> Thank you,
>
>
> Jeffory J. Scharff, Esq.
> SCHARFF, BRADY& VINDING
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> Sacramento, CA 95814
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